

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Oakey Bowyer, Christopher Velez, and
Carlos Torres, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

Diversified Contractors Inc., an Ohio
Corporation, **George Rumack**, an
individual, and **Eric Lilly**, an individual,

Defendants.

No. _____

**COLLECTIVE ACTION
COMPLAINT**

Plaintiffs, Oakey Bowyer (“Plaintiff Bowyer”), **Christopher Velez** (“Plaintiff
Velez”), and **Carlos Torres** (“Plaintiff Torres”) (collectively “Plaintiffs”), individually,
and on behalf of all other persons similarly situated, allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action on behalf of themselves and all similarly-situated
current and former Construction Repair Technicians¹ of Defendants Diversified
Contractors Inc., George Rumak, and Eric Lilly (“Defendants”) who were compensated

¹ For the purposes of this Complaint, “Construction Repair Technician” is
exclusively a job title used for the purpose of classifying the putative class of similarly
situated individuals, is not necessarily the job title of the Plaintiffs and putative class, and
has no bearing or relation to any specialization, skill, education, training, or other
qualification that might otherwise be associated with such a job title.

1 at a straight-time hourly rate for all hours worked, regardless of whether those hours
2 exceeded 40 in any given workweek.

3 2. Plaintiffs, individually, and on behalf of all others similarly-situated, bring
4 this action against Defendants for their unlawful failure to pay overtime in violation of
5 the Fair Labor Standards Act, 29 U.S.C. § 201-219 (the “FLSA”).
6

7 3. Plaintiffs bring a collective action under the FLSA to recover the unpaid
8 overtime owed to them individually and on behalf of all other similarly-situated
9 employees, current and former, of Defendants. Members of the Collective Action are
10 referred to as the “Collective Members.”
11

12 4. The Collective Members are all current and former Construction Repair
13 Technicians who were employed by Defendants at any time starting three years before
14 this Complaint was filed, up to the present.
15

16 5. This is an action for unpaid wages, liquidated damages, interest, attorneys’
17 fees, and costs under the FLSA.

18 6. The FLSA was enacted “to protect all covered workers from substandard
19 wages and oppressive working hours.” Under the FLSA, employers must pay all non-
20 exempt employees an overtime premium for all time spent working in excess of 40 hours
21 per week.
22

23 7. Defendants engaged in the regular policy and practice of misclassifying
24 their Construction Repair Technicians as independent contractors rather than employees.
25 Specifically, Defendants subjected Plaintiffs and the Collective Members to their policy
26 and practice of misclassifying their carpenters, who were employees, as independent
27

1 contractors and then failing and/or refusing to pay them overtime for time they worked in
2 excess of 40 hours per week, in violation of 29 U.S.C. § 207(a).

3 8. Therefore, Defendants did not pay Plaintiffs or the Collective Members the
4 applicable overtime rate, in violation of 29 U.S.C. § 207.

5
6 **JURISDICTION AND VENUE**

7 9. Plaintiffs reallege and incorporate by reference all allegations in all
8 preceding paragraphs.

9 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
10 29 U.S.C. § 201, *et seq.* because this action arises under the Constitution and laws of the
11 United States.

12 11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c)
13 because acts giving rise to the claims of Plaintiffs and the Collective Members occurred
14 within the Northern District of Ohio, and Defendants regularly conduct business in and
15 have engaged in the conduct alleged in the Complaint – and, thus, are subject to personal
16 jurisdiction in – this judicial district.

17
18
19 **PARTIES**

20 12. Plaintiffs reallege and incorporate by reference all allegations in all
21 preceding paragraphs.

22 13. At all times material to the matters alleged in this Complaint, Plaintiff
23 Bowyer was an individual residing in Cuyahoga County, Ohio, and is a former employee
24 of Defendants.
25
26
27

1 14. At all material times, Plaintiff Bowyer was a full-time, non-exempt
2 employee of Defendants from approximately March 1, 2015 through the April 30, 2016.

3 15. Throughout Plaintiff Bowyer's entire employment, he was paid
4 approximately \$15.00 per hour.

5
6 16. At all times material to the matters alleged in this Complaint, Plaintiff
7 Velez was an individual residing in Cuyahoga County, Ohio, and is a former employee of
8 Defendants.

9
10 17. At all material times, Plaintiff Velez was a full-time, non-exempt employee
11 of Defendants from approximately November 1, 2012 through approximately March 31,
12 2016.

13 18. Throughout Plaintiff Torres' entire employment, he was paid
14 approximately \$15.00 per hour.

15
16 19. At all times material to the matters alleged in this Complaint, Plaintiff
17 Torres was an individual residing in Lorain County, Ohio, and is a former employee of
18 Defendants.

19
20 20. At all material times, Plaintiff Torres was a full-time, non-exempt
21 employee of Defendants from approximately February 1, 2015 through approximately
22 October 31, 2015.

23 21. Throughout Plaintiff Torres' entire employment, he was paid
24 approximately \$15.00 per hour.

25
26 22. At all material times, Plaintiffs were employed by Defendants but classified
27 and paid as independent contractors. Defendants employed Plaintiffs to perform various

1 construction and remodeling-related duties, which generally consisted of, but was not
2 limited to, building and repair; new construction and/or remodeling of single-family
3 homes; installation of roofing, siding, and framing; setting windows and doors; trim
4 work; painting; electrical work; and other similar construction and remodeling-related
5 work that Defendants required them to do.
6

7 23. At all material times, Plaintiffs were employees of Defendants as defined
8 by the FLSA, 29 U.S.C. § 203(e)(1) and were non-exempt employees under 29 U.S.C. §
9 213(a)(1).
10

11 24. Plaintiffs have given their written consent to be party Plaintiffs in this
12 action pursuant to 29 U.S.C. § 216(b), a true and accurate copy of which is attached to
13 this Complaint as “**Exhibit A.**”
14

15 25. Plaintiffs bring this action on behalf of themselves and on behalf of all
16 other persons similarly situated who are current or former Construction Repair
17 Technicians of Defendants, including but not limited to Construction Repair Technicians
18 who agree in writing to join this action seeking recovery under the FLSA.
19

20 26. Plaintiffs bring this action on behalf of themselves and on behalf of all
21 other similarly situated current and former employees of Defendants—specifically,
22 Construction Repair Technicians who were not paid overtime for time worked in excess
23 of 40 hours in any given workweek and whose wages, therefore, were non-compliant
24 with the FLSA.
25
26
27

1 27. Defendant Diversified Contractors Inc. is an Ohio corporation, authorized
2 to do business in the State of Arizona and was at all relevant times Plaintiffs' and the
3 Collective Members' Employer as defined by 29 U.S.C. § 203(d).

4 28. At all relevant times, Defendant Diversified Contractors Inc. owned and
5 operated as Diversified Contractors Inc., a general construction and remodel company in
6 Lorain, Lorain County, Ohio.

7 29. Defendant George Rumack is has caused events to take place giving rise to
8 the claims in this Complaint. George Rumack is an owner of Diversified Contractors Inc.
9 and was at all relevant times Plaintiffs' and the Collective Members' employer as defined
10 by the FLSA, 29 U.S.C. § 203(d).

11 30. Under the FLSA, Defendant George Rumack is an employer. The FLSA
12 defines "employer" as any individual who acts directly or indirectly in the interest of an
13 employer in relation to an employee. George Rumack is an owner of Diversified
14 Contractors Inc.

15 31. At all relevant times throughout Plaintiffs' and the Collective Members'
16 employment, George Rumack had the authority to hire and fire employees, supervised
17 and controlled work schedules or the conditions of employment, determined the rate and
18 method of payment, and maintained employment records in connection with Plaintiffs'
19 and the Collective Members' employment with Diversified Contractors Inc. As persons
20 who acted in the interest of Diversified Contractors Inc. in relation to the company's
21 employees, George Rumack is subject to individual liability under the FLSA.
22
23
24
25
26
27

1 32. Defendant Eric Lilly is has caused events to take place giving rise to the
2 claims in this Complaint. Eric Lilly is an owner of Diversified Contractors Inc. and was
3 at all relevant times Plaintiffs' and the Collective Members' employer as defined by the
4 FLSA, 29 U.S.C. § 203(d).

5
6 33. Under the FLSA, Defendant Eric Lilly is an employer. The FLSA defines
7 "employer" as any individual who acts directly or indirectly in the interest of an employer
8 in relation to an employee. Eric Lilly is an owner of Diversified Contractors Inc.

9
10 34. At all relevant times throughout Plaintiffs' and the Collective Members'
11 employment, Eric Lilly had the authority to hire and fire employees, supervised and
12 controlled work schedules or the conditions of employment, determined the rate and
13 method of payment, and maintained employment records in connection with Plaintiffs'
14 and the Collective Members' employment with Diversified Contractors Inc. As persons
15 who acted in the interest of Diversified Contractors Inc. in relation to the company's
16 employees, Eric Lilly is subject to individual liability under the FLSA.

17
18 35. Plaintiffs are further informed, believe, and therefore allege that each of the
19 Defendants gave consent to, ratified, and authorized the acts of all other Defendants, as
20 alleged in this Complaint.

21
22 36. Defendants, and each of them, are sued in both their individual and
23 corporate capacities.

24 37. Defendants are jointly and severally liable for the injuries and damages
25 sustained by Plaintiffs and the Collective Members.
26
27

39. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to Defendants.

41. Defendants individually and/or through an enterprise or agent, directed and exercised control over Plaintiffs' and the Collective Members' work and wages at all relevant times.

43. At all relevant times, Plaintiffs and the Collective Members, in their work for Defendants, were employed by an enterprise engaged in commerce that had annual gross sales of at least \$500,000.

44. At all relevant times, all Defendants were joint employers of Plaintiffs and the Collective Members. At all relevant times: (1) Defendants were not completely disassociated with respect to the employment of Plaintiffs and the Collective Members; and (2) Defendants were under common control. In any event, at all relevant times, Defendants were joint employers under the FLSA and 29 C.F.R. § 791.2(b) and employed Plaintiffs and the Collective Members.

-8-

1 45. Plaintiffs reallege and incorporate by reference all allegations in all
2 preceding paragraphs.

3 46. Defendants own and/or operate as Diversified Contractors Inc., an
4 enterprise located in Cuyahoga County, Ohio.

5 47. Diversified Contractors Inc. is an enterprise that is a self-described “full
6 service refurbishment” company whose primary marketplace offering is construction
7 services, including “top to bottom, roof to basement, siding, trim and cabinets.”
8

9 48. On approximately March 1, 2015, Plaintiff Bowyer began employment
10 with Defendants as a Construction Repair Technician, performing various repetitive tasks
11 such as building and repair; new construction and/or remodeling of single-family homes;
12 installation of roofing, siding, and framing; setting windows and doors; trim work;
13 painting; electrical work; and other similar construction and remodeling-related work.
14

15 49. On approximately November 1, 2012, Plaintiff Velez began employment
16 with Defendants as a Construction Repair Technician, performing various repetitive tasks
17 such as building and repair; new construction and/or remodeling of single-family homes;
18 installation of roofing, siding, and framing; setting windows and doors; trim work;
19 painting; electrical work; and other similar construction and remodeling-related work.
20

21 50. On approximately February 1, 2015, Plaintiff Torres began employment
22 with Defendants as a Construction Repair Technician, performing various repetitive tasks
23 such as building and repair; new construction and/or remodeling of single-family homes;
24 installation of roofing, siding, and framing; setting windows and doors; trim work;
25 painting; electrical work; and other similar construction and remodeling-related work.
26
27

1 51. Rather than classify their Construction Repair Technicians as employees,
2 Defendants classified them as independent contractors.

3 52. Defendants misclassified all of their Construction Repair Technicians,
4 including Plaintiffs and the Collective Members, as independent contractors.

5 53. Despite Defendants having misclassified all of their Construction Repair
6 Technicians, including Plaintiffs and the Collective Members, as independent contractors,
7 Plaintiffs and the Collective Members were actually employees, as defined by the FLSA,
8 29 U.S.C. § 201 et seq.
9

10 54. All of Defendants' Construction Repair Technicians, including Plaintiffs
11 and the Collective Members, in their work for Defendants, used Defendants' equipment
12 and wore company uniforms.
13

14 55. Defendants controlled their Construction Repair Technicians schedules,
15 including those of Plaintiffs and the Collective Members.
16

17 56. At all relevant times, Plaintiffs and the Collective Members were
18 economically dependent on Defendants.

19 57. The following further demonstrate that their Construction Repair
20 Technicians, including Plaintiffs and the Collective Members, were employees:
21

- 22 a. Defendants had the exclusive right to hire and fire their Construction
23 Repair Technicians, including Plaintiffs and the Collective
24 Members;
25
26
27

- b. Defendants made the decision not to pay overtime to their Construction Repair Technicians, including Plaintiffs and the Collective Members;
- c. Defendants supervised their Construction Repair Technicians, including Plaintiffs and the Collective Members, and subjected them to Defendants' rules;
- d. Defendants' Construction Repair Technicians, including Plaintiffs and the Collective Members, had no financial investment with Defendants' business;
- e. Defendants' Construction Repair Technicians, including Plaintiffs and the Collective Members, had no opportunity for profit or loss in the business;
- f. The services rendered by Defendants' Construction Repair Technicians, including Plaintiffs and the Collective Members, in their work for Defendants was integral to Defendants' business;
- g. Defendants' Construction Repair Technicians, including Plaintiffs and the Collective Members, were hired as permanent employees, working for Defendants for continuous unspecified amounts of time.

58. At all relevant times, Defendants did not pay Plaintiffs or the Collective Members one and one half times their regular rates of pay for time spent working in excess of 40 hours in a given workweek.

1 59. Defendants classified their Construction Repair Technicians, including
2 Plaintiffs and the Collective Members, as independent contractors to avoid Defendants'
3 obligation to pay their Construction Repair Technicians, including Plaintiffs and the
4 Collective Members, one and one half time their regular rates of pay for all hours worked
5 in excess of 40 hours per week.
6

7 60. Plaintiffs and the Collective Members were non-exempt employees.

8 61. From the beginning of Plaintiffs' and the Collective Members' employment
9 through the present day, Defendants failed to properly compensate Plaintiff for any of
10 their overtime hours. During this time, Plaintiffs and the Collective Members worked
11 approximately sixty (60) hours per week.
12

13 62. Plaintiffs and the Collective Members were generally paid on an hourly
14 basis.
15

16 63. Plaintiffs and the Collective Members were not managers. Plaintiffs and the
17 Collective Members did not have supervisory authority over any employees, did not
18 possess the authority to hire or fire employees, did not possess authority to make critical
19 job decisions with respect to any of Defendants' employees, did not direct the work of
20 two or more employees, and did not exercise discretion and independent judgment with
21 respect to matters of significance.
22

23 64. Plaintiffs' and the Collective Members' primary duty was not the
24 management of the enterprise in which he was employed or any recognized department
25 of the enterprise.
26
27

1 65. From the beginning of Plaintiffs' and the Collective Members' employment
2 through the present day, Defendants failed to properly compensate them for any of their
3 overtime hours.

4 66. Defendants knew that – or acted with reckless disregard as to whether –
5 their refusal or failure to properly compensate Plaintiffs and the Collective Members over
6 the course of their employment would violate federal and state law, and Defendants were
7 aware of the FLSA overtime wage requirements during Plaintiffs' and the Collective
8 Members' employment. As such, Defendants' conduct constitutes a willful violation of
9 the FLSA.
10

11 67. Defendants refused and/or failed to properly disclose to or apprise Plaintiffs
12 and the Collective Members of their rights under the FLSA.
13

14 68. Therefore, in a given workweek, and during each and every workweek of
15 Plaintiffs' and the Collective Members' employment with Defendants, Plaintiffs and the
16 Collective Members were subject to Defendants' policy and practice of not paying one
17 and one half times Plaintiffs' and the Collective Members' regular rates of pay.
18

19 69. In a given workweek, and during each and every workweek of Plaintiffs'
20 and the Collective Members' employment with Defendants, Plaintiffs and the Collective
21 Members worked more than 40 hours but were not paid the applicable one and one half
22 times Plaintiffs' and the Collective Members' regular rates of pay for time they spent
23 working in excess of 40 hours.
24

25 70. Plaintiffs believe and therefore claim that Defendants subjected each and
26 every Construction Repair Technician that they employed, including Plaintiffs and the
27

1 Collective Members, to its policy and specific course of not paying one and one half
2 times Plaintiffs' and the Collective Members' regular rates of pay.

3 71. Plaintiffs and the Collective Members are covered employees within the
4 meaning of the Fair Labor Standards Act ("FLSA").

5 72. Defendants refused and/or failed to properly disclose to or apprise Plaintiffs
6 and the Collective Members of their rights under the FLSA.

7 73. Defendants individually and/or through an enterprise or agent, directed and
8 exercised control over Plaintiffs' and Collective Members' work and wages at all relevant
9 times.
10

11 74. Due to Defendants' illegal wage practices, Plaintiffs and the Collective
12 Members are entitled to recover from Defendants compensation for unpaid overtime
13 wages, an additional amount equal amount as liquidated damages, interest, and
14 reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).
15
16

17 **COLLECTIVE ACTION ALLEGATIONS**

18 75. Plaintiffs reallege and incorporate by reference all allegations in all
19 preceding paragraphs.

20 76. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) on their own
21 behalves and as representatives of individuals similarly situated who are current or
22 former Construction Repair Technicians of Defendants.

23 77. At all times material, Defendants paid Plaintiffs and the Collective
24 Members at a fixed hourly rate of less than the full.
25
26
27

1 78. Defendants subjected all of their Construction Repair Technicians,
2 including Plaintiffs and the Collective Members, to their policy and practice of
3 misclassifying their Construction Repair Technicians, who were actually employees, as
4 independent contractors.

5 79. Defendants subjected all of their Construction Repair Technicians,
6 including Plaintiffs and the Collective Members, to their policy and practice of not
7 paying their Construction Repair Technicians one and one half times their regular rates of
8 pay for time they spent working in excess of 40 hours in a given workweek, in violation
9 of 29 U.S.C. § 207(a).
10

11 80. At all times material, Plaintiffs and the Collective Members are and have
12 been similarly situated, have had substantially similar job requirements and pay
13 provisions, and are and have been subject to Defendants' decision, policy, plan, and
14 common programs, practices, procedures, protocols, routines, and rules of willfully
15 subjecting Plaintiffs and the Collective Members to their policy and practice of not
16 paying their Construction Repair Technicians one and one half times their regular rates of
17 pay for time they spent working in excess of 40 hours in a given workweek, in violation
18 of 29 U.S.C. § 207(a).
19
20

21 81. Plaintiffs' claims stated in this complaint are essentially the same as those
22 of the Collective Members. This action is properly maintained as a collective action
23 because in all pertinent aspects the employment relationship of individuals similarly
24 situated to Plaintiffs is identical or substantially similar.
25
26
27

1 82. Plaintiffs and the Collective Members were each compensated on an hourly
2 basis for the duration of their employment with Defendants.

3 83. The Collective Members perform or have performed the same or similar
4 work as Plaintiffs.

5 84. Defendants' failure to pay overtime compensation required by the FLSA
6 results from generally applicable policies or practices, and does not depend on the
7 personal circumstances of Plaintiffs or the Collective Members.
8

9 85. While Plaintiffs and Defendants have described Plaintiffs' and the
10 Collective Members' job titles as Construction Repair Technicians, the specific job titles
11 or precise job responsibilities of each Collective Member does not prevent collective
12 treatment.
13

14 86. All Collective Members, irrespective of their particular job requirements
15 and job titles, are entitled to proper overtime wage compensation for all hours worked in
16 excess of 40 in a given workweek.
17

18 87. Although the exact amount of damages may vary among the Collective
19 Members, the damages for the Collective Members can be easily calculated by a simple
20 formula. The claims of all Collective Members arise from a common nucleus of facts.
21 Liability is based on a systematic course of wrongful conduct by the Defendants that
22 caused harm to all of the Collective Members.
23

24 88. As such, Plaintiffs bring their FLSA overtime wage claim as a collective
25 action on behalf of the following class:
26
27

1 **The FLSA Collective Members are all of Defendants’ current**
2 **and former Construction Repair Technicians who were not paid**
3 **one and one half times their regular rates of pay for time spent**
4 **working in excess of 40 hours in a given workweek, starting**
5 **three years before this lawsuit was filed up to the present.**

6 89. Defendants’ unlawful conduct, as described in this Collective Action
7 Complaint, is pursuant to Defendants’ corporate policy or practice of minimizing labor
8 costs by refusing and/or failing to properly compensate its employees according to the
9 FLSA.

10 90. Defendants are aware or should have been aware that federal law prohibited
11 them from not paying their Construction Repair Technicians—namely, Plaintiffs and the
12 Collective Members—an overtime premium wage for time spent working in excess of 40
13 hours per given workweek.

14 91. Defendants’ unlawful conduct has been widespread, repeated, and
15 consistent.

16 92. This action is properly brought and maintained as an opt-in collective
17 action pursuant to 29 U.S.C. § 216(b).

18 93. Upon information and belief, the individuals similarly situated to Plaintiffs
19 include more than thirty (30) employees currently and/or formerly employed by
20 Defendants, and Plaintiffs are unable to state the precise number of similarly-situated
21 employees because that information is solely in Defendants’ possession, custody, or
22 control, but it can be readily ascertained from their employment records and the records
23 of Defendants’ payroll processor.
24
25
26
27

1 94. Notice can be provided to the Collective Members by First Class Mail to
2 the last address known to Defendants, via email at the last known email address known to
3 Defendants, and by text message to the last known telephone number known to
4 Defendants.

5
6 **DAMAGES**

7 95. Plaintiffs reallege and incorporate by reference all allegations in all
8 preceding paragraphs.

9 96. Plaintiffs and the Collective Members are entitled to recover overtime
10 compensation for the hours they worked in excess of 40 per given workweek for which
11 they were not paid at the federally mandated one and one half times their regular rates of
12 pay.

13
14 97. Plaintiffs and the Collective Members are also entitled to an amount equal
15 to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

16
17 98. Plaintiffs and the Collective Members are also entitled to recover their
18 attorney's fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

19 **COUNT ONE: FAIR LABOR STANDARDS ACT**
20 **ILLEGAL TIP POOL AND TIP RETENTION**

21 99. Plaintiffs reallege and incorporate by reference all allegations in all
22 preceding paragraphs.

23
24 100. At all relevant times, Defendants engaged in the regular policy and practice
25 of classifying their Construction Repair Technicians, including Plaintiffs and the
26
27

1 Collective Members, as independent contractors when they were in reality employees as
2 defined by the FLSA.

3 101. At all relevant times, Defendants did not pay Plaintiffs or the Collective
4 Members one and one half times their regular rates of pay for time spent working in
5 excess of 40 hours in a given workweek.
6

7 102. Defendants classified their Construction Repair Technicians, including
8 Plaintiffs and the Collective Members, as independent contractors to avoid Defendants'
9 obligation to pay their Construction Repair Technicians, including Plaintiffs and the
10 Collective Members, one and one half time their regular rates of pay for all hours worked
11 in excess of 40 hours per week.
12

13 103. Defendants engaged in such conduct in direct violation of 29 U.S.C. §
14 207(a).
15

16 104. As such, unpaid overtime wages for such time Plaintiffs and the Collective
17 Members worked in excess of 40 hours per given workweek is owed to Plaintiffs and the
18 Collective Members for the entire time they were employed by Defendants.

19 105. Defendants knew that – or acted with reckless disregard as to whether –
20 their refusal or failure to properly compensate Plaintiffs and the Collective Members over
21 the course of their employment would violate federal and state law, and Defendants were
22 aware of the FLSA overtime wage requirements during Plaintiffs' and the Collective
23 Members' employment. As such, Defendants' conduct constitutes a willful violation of
24 the FLSA.
25
26
27

1 106. Plaintiffs and the Collective Members are therefore entitled to
2 compensation for their unpaid overtime wages at an hourly rate, to be proven at trial, plus
3 an additional equal amount as liquidated damages, together with interest, reasonable
4 attorney's fees, and costs.

5
6 WHEREFORE, Plaintiffs, Oakey Bowyer, Christopher Velez, and Carlos Torres,
7 individually, and on behalf of all other similarly situated persons, requests that this Court
8 grant the following relief in Plaintiffs' and the Collective Members' favor, and against
9 Defendants:

- 10 A. For the Court to declare and find that the Defendants committed one or
11 more of the following acts:
12
13 i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by
14 failing to pay proper overtime wages;
15
16 ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;
17
18 B. For the Court to award damages in the amounts of all unpaid overtime
19 compensation due and owing to Plaintiffs and the Collective Members for
20 time they spent working in excess of 40 hours per given workweek;
21
22 C. For the Court to award compensatory damages, including liquidated
23 damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at
24 trial;
25
26 D. For the Court to award prejudgment and post-judgment interest on any
27 damages awarded;

1 E. For the Court to award Plaintiffs' and the Collective Members' reasonable
2 attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and
3 all other causes of action set forth in this Complaint;

4 F. For the Court to provide reasonable incentive awards for each named
5 Plaintiff to compensate them for the time they spent attempting to recover
6 wages for the Collective Members and for the risks they took in doing so;
7
8 and

9 G. Such other relief as this Court deems just and proper.

10 **REQUEST FOR COLLECTIVE ACTION CERTIFICATION**

11
12 As to Count I of this Complaint, Plaintiffs requests that the Court designate this
13 action as a collective action on behalf of the FLSA Collective Members and promptly
14 issue a notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the
15 FLSA opt-in class, apprising them of the pendency of this action, and permitting them to
16 timely assert FLSA claims in this action by filing individual Consent to Sue Forms
17 pursuant to 29 U.S.C. § 216(b).
18

19
20
21 RESPECTFULLY SUBMITTED this 9th day of February, 2017.

22 THE BENDAU LAW FIRM, PLLC

23 By: /s/ Clifford P. Bendau, II
24 Clifford P. Bendau, II
25 Christopher J. Bendau
26 *Attorneys for Plaintiffs*
27